IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 211 OF 2003

Shri. Sanjay Bhagwan Barge,
C/o. Shri. Sopan Bhosale,
Shivshakti Chawl No. 8,
Room No. 2, New Shivaji Nagar,
Thakurpada, Kalwa,
District Thane. ... Petitioner

Vs.

1. The President,
Nagrik Sahayya Kendra,
Rafi Ahmed Kidwai Marg,
Wadala, Mumbai 400 031.

2. Headmistress,
Dyaneshwar Vidyalaya,
Rafi Ahmed Kidwai Marg,
Wadala, Mumbai 400 031.

3. Education Officer,
Greater Mumbai,
North Division,
59, New Administrative Building
No. 2, 2nd Floor,
Ramkrishna Chemburkar Marg,
Chembur (E),
Mumbai 400 071.

4. State of Maharashtra,
through its Department of
Education & Employment,
Mantralaya Annexe,
Mumbai 400 032.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 28, 2004

ORAL JUDGMENT

1. The limited issue which arises in the present petition is whether it is the tribunal which will have jurisdiction to decide the issue as raised by the petitioner herein or as held by the tribunal in its impugned order dated 13.10.2002 that it is the Shikshan Sevek Grievance Committee.

2. A few facts may be set out for the purpose of deciding the controversy.

. It is the case of the petitioner that he was appointed in the school run by the Nagrik Sahaya Kendra known as Dnyaneshwar Vidyalaya in April, 1995 as Assistant Teacher. His initial appointment was from 26.7.1995 to 26.8.1995 and thereafter from 28.2.1996 till the period of absence on leave of Smt. Sambh. It is his case that thereafter he was issued a fresh letter of appointment and in fact by letter dated 28.9.1998 the respondents approved his appointment from 13.6.1998 onwards as on probation. The Respondents intimated the petitioner by letter of 30.3.2001 that his appointment period is ending on 30.5.2001 and as such the petitioner ought to furnish a fresh application for getting an appointment for the next academic years. An application was made on 10.4.2001.

. By letter of 13.6.2001, the petitioner was issued an appointment letter that he has been appointed as Shikshan Sevak under the scheme for appointment of Shikshan Sevaks. On 30.8.2001 the petitioner addressed a letter to Head Mistress intimating that on 1.8.2001 the Head Master had forcibly got a writing from him on a stamp paper that he had been appointed in the place of Mr. B.M. Deokar and that he was threatened that if he did not give such writing then he would have to

lose his job. It was therefore, his contention that the stamp paper should be returned. It is his case that his services came to be orally terminated on 25.1.2002 pursuant to which an appeal was preferred bearing Appeal No. 31 of 2002 which was dismissed on 30.10.2002 by holding that the Tribunal had no jurisdiction and the issue will have to be decided by the Shikshan Sevak Grievance Committee.

. On behalf of the Respondents, it is contended that the petitioner was appointed against initially against a leave vacancy and thereafter against the vacancy reserved for backward class candidate. As there was backlog the petitioner could not have been appointed on a regular basis. In the meantime as the scheme for appointment of Shikshan Sevak came into force, he was appointed as Shikshan Sevak considering that his earlier appointment had exhausted itself. It is contended that as the petitioner is challenging the present termination as Shikshan Sevak and not the earlier terminations, the petitioner now cannot complain that the order of the tribunal suffers from an error apparent on the face of record and that it is the tribunal alone which must decide this issue.

3. Having heard learned counsel, the question which arises for consideration is whether the view taken by the Tribunal needs to be interfered with.

At this stage, it may be pointed that under the clause 16 of the scheme for appointment of Shikshan Sevak dated 25.11.2000, reads as under :

> "16. Cadres to which these orders are not applicable : - These orders shall not be applicable to following cadres of teachers :
>
> 1) Part-time teachers working on clock hourly basis.
>
> 2) Teachers rendered surplus as well as those teachers who were in permanent service earlier and had resigned from their posts and have accepted employment afresh.
>
> 3) If a non-backward class candidate has been already appointed on a post reserved for backward class candidate, till such time that a backward class candidate is available, said non-backward class candidate is available, said non-backward candidate shall be entitled to receive salary as per provisions of Maharashtra Private School Employees (Service Conditions) Rules, 1981."

. From a reading of the above clauses, it will be

clear that if a non-backward class candidate has been already appointed against a post reserved for backward class candidate till such time as the backward class candidate is available, such non-backward class candidate shall be entitled to receive salary as per the provisions of the Maharashtra Private School Employees Service Conditions Rules, 1981. It is therefore, clear that considering Clause 16 if a non-backward class candidate was appointed against the post meant for backward class candidate and if such candidate was already holding the post before coming into force of the Shikshan Sevak scheme by notification of 13.10.2000, then he will continue to hold such post and draw salary under the Act.

4. In the instant case, the jurisdiction of the Tribunal would be based on the pleadings in the petition. It is those pleadings which the tribunal must consider to assume jurisdiction. In the event respondents appear and contest the jurisdiction on the ground that the tribunal had no jurisdiction either on the pleadings as pleaded by the petitioner Applicant before the tribunal or on subsequent pleadings or material produced by the respondents then it is for the tribunal to decide whether it has jurisdiction to decide the dispute. The expression "jurisdiction" has to be read in the context of pecuniary, territorial or as to the subject matter of the dispute. In the instant

case, we are concerned with the dispute in so far as subject matter is concerned. The question that the tribunal was called upon to decide was whether it had jurisdiction to entertain the appeal preferred by the Petitioner under Section 9 of the Mahrashtra Employees of Private Schools (Condition of service) Act, 1977 and the rules framed thereunder.

. The averments by the petitioner in Paragraph 19 was that he was appointed against a permanent vacancy. It is his further contention that he belongs to general category and only one of the appointment letter shows that it was against the post reserved for SC/ST/DT/NT. It was further contended that his juniors in the cadre has been made permanent by the respondents. It is his further case that he was appointed on probation. The averments by the Petitioner were that his appointment was against a regular vacancy and initially on probation. It is no doubt true that he did not advert to the provisions of the Government Resolution in so far as Shikshan Sevak are concerned. However, mere non reference would be of no consequence considering the resolution itself wherein it is provided that if the candidate was appointed against a post reserved for backward class candidate, then such candidate will be entitled to receive salary as per the provisions of the Maharashtra Private Employees (Conditions of

Service) Rules, 1981. In other words even if the petitioner have been appointed as Shikshan Sevak and had given his undertaking for appointment as Shikshan Sevak, never the less that would be contrary to the Government Resolution of 13.10.2001 which clearly spells out such cadre will not fall within the Government Resolution. The contention of the Respondents themselves was that the petitioner was appointed against a reserved post and therefore, his claim to be considered as permanent has to be rejected. It would thus be clear that mere nomenclature given to the petitioner or the fact that he was designated as Shikshan Sevak cannot estop him in law from contending that the said appointment is nonest in the eyes of law considering the G.R. for appointment of Shikshan Sevak.

5. The learned Tribunal has proceeded solely on the fact that as the petitioner was appointed as Shikshan Sevak he can not claim any right under the provisions of the Maharashtra Employees of Private Schools (Condition of Service) Act, 1977 and in these circumstances, he could have no jurisdiction. As noted earlier, it is the pleadings by the petitioner which ought to be the basis on which the issue of jurisdiction ought to have been answered in the appeal. No doubt the relief sought and the course of action pleaded would also be relevant for the purpose of deciding the issue. In these

circumstances, the enquiry ought to have been whether the petitioner's contention that he was appointed against a permanent vacancy under the Schools Act and therefore, his services could not be terminated had to be considered bearing in mind the contentions raised by the respondents that he was not entitled to be so appointed considering his appointment was against the leave vacancy initially and subsequently against the post reserved for the backward class candidate. The tribunal failed to exercise jurisdiction in that matter and merely proceeded on the footing that as the petitioner had challenged the order terminating Shikshan Sevak the only issue before it was as to jurisdiction of the tribunal on that basis.

. In my opinion, there has been failure by the Tribunal to exercise jurisdiction on the facts pleaded in the present appeal. For example if as now held by the tribunal that it is not the tribunal but the grievance committee which have to decide the issue, on going to the Grievance committee the contention of the petitioner that he was appointed against a regular post, under the M.E.P.S. Act cannot be enquired into as that would be outside the jurisdiction of the Grievance committee. The tribunal therefore, had to answer the main issue raised by the petitioner as to whether his claim as Assistant Teacher was justified. That was solely within the jurisdiction

of the Tribunal. If the contention of the Petitioner that his earlier appointment was as Assistant Teacher or against regular post was rejected, the appeal would be liable to be rejected and or if the tribunal ultimately comes to the finding that in the earlier appointment the petitioner had no right and the only right was as a Shikshan Sevak, the tribunal would then hold that it had no jurisdiction in which event it would be within the jurisdiction of the Grievance committee to decide whether the termination as Shikshan Sevak was legal or proper.

6. As the tribunal has failed to exercise jurisdiction vested in it, the petition is partly allowed in as much as the impugned order dated 30.10.2002 in Appeal No. 31 of 2002 is set aside and the matter is remanded back to the tribunal for deciding the matter afresh in terms of what is set out in the earlier part of the judgement. It is made clear that all issues on merit are left open for consideration before the tribunal. No order as to costs. Rule made absolute accordingly.

. Considering the facts and circumstance, the learned tribunal will dispose of the matter within six months from today.

(F.I. REBELLO,J.)